

Message Text

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22

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TAGS: PINT, CI

SUBJECT: COURT BACKS PDC RADIO'S RIGHT TO REOPEN

REF: A) SANTIAGO 469 B) 75 SANTIAGO 8385

1. SUMMARY: MILITARY APPEALS COURT RULED FEB 3 THAT RADIO BALMACEDA MAY REOPEN. THE CHRISTIAN DEMOCRAT PARTY (PDC) STATION HAD BEEN CLOSED INDEFINITELY BY SANTIAGO MILITARY ZONE COMMANDER ON JAN 20 (REF A). COURT'S ORDER SURPRISED EVEN PDC OPTIMISTS. CASE INVOLVES CONTROVERSIAL DECREE LAW 1281 (REF B) WHICH INTRODUCED MODIFICATIONS TO BASIC STATE SECURITY LAW INCREASING AUTHORITY OF LOCAL COMMANDERS AND PERMITTING ADDITIONAL RESTRICTIONS ON MEDIA. MEDIA HAVE CONDUCTED CONCERTED PROTEST AGAINST NEW PROVISIONS. JUNTA NOW APPEARS TO BE BACKING AWAY FROM DECREE. END SUMMARY.

2. RADIO BALMACEDA APPEALED TO THE "CORTE MARCIAL" THE DECISION OF SANTIAGO'S MILITARY ZONE COMMANDER CLOSING THE STATION. DL 1281 OF DEC 1975 INTRODUCED THE POSSIBILITY OF APPEAL PROCEDURES AS LEAVENING ELEMENT IN OTHERWISE TOUGHENED LEGAL SANCTIONS. THE COURT, SIMILAR TO US MILITARY APPEALS COURT IN JURISDICTION, INCLUDES TWO CIVILIAN JUDGES WHO SIT WITH SERVICE REPRESENTATIVES (EXCLUDING NAVY, WHICH HAS ITS OWN SYSTEM).

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3. LEGALISTICALLY, BALMACEDA CASE WAS "CATCH 22" SITUATION. ZONE COMMANDER DID NOT WISH TO BASE HIS ACTION ON DL 1281, ALTHOUGH IT APPLIES TO RADIO MEDIA, BECAUSE IT SETS SIX-DAY LIMIT ON SUSPENSION WHICH MAY BE IMPOSED. ACCORDINGLY, HE ACTED UNDER OLDER (1958) PROVISIONS OF STATE SECURITY LAW DEALING WITH CENSORSHIP OF PRESS. BUT UNDER UNMODIFIED STATE SECURITY LAW, ZONE COMMANDER DOES NOT HAVE AUTHORITY TO IMPOSE SUCH RESTRAINTS; THEY MUST BE ORDERED BY CHIEF EXECUTIVE. ON OTHER SIDE, BALMACEDA AND MEDIA ARGUE THAT DL 1281 IS UNCONSTITUTIONAL, THEREFORE NULL. BUT STATION'S LAWYERS RELIED UPON DL 1281 IN ORDER TO BRING APPEAL.

4. FOUR SITTING MEMBERS OF THE COURT RULED UNANIMOUSLY THAT ZONE COMMANDER HAD AUTHORITY AND CAUSE TO CLOSE STATION UNDER THE PROVISIONS OF DL 1281. ACCORDINGLY, THE STATION COULD BE KEPT OFF THE AIR FOR SIX DAYS, BUT SINCE MORE THAN SIX DAYS HAD PASSED, THE STATION SHOULD BE PERMITTED TO REOPEN. THE COURT ALSO NOTED THAT THE CLOSURE ORDER RELIED UPON A PORTION OF THE 1958 STATE SECURITY LAW (ART. 34, "D") WHICH REFERRED SOLELY TO CONTROL, NOT CLOSURE OF MEDIA OUTLETS.

5. RADIO BALMACEDA'S OUTSPOKEN MANAGER, BELISARIO VELASCO, OBVIOUSLY TAKEN ABACK BY THE QUICK FAVORABLE DECISION, SAID HE WOULD CONSULT WITH MILITARY AUTHORITIES TO CONFIRM HE COULD GO BACK ON THE AIR. GOVERNMENT COULD APPEAL THE DECISION TO THE SUPREME COURT, BUT IT WOULD THEREBY RUN THE RISK OF RAISING DL 1281'S CONSTITUTIONALITY. VELASCO EXPECTS TO RECEIVE AUTHORIZATION AND PLANS TO BEGIN BROADCASTING FEB 6.

6. THE COURT'S DECISION TOOK PLACE AGAINST THE BACKDROP OF CONCERTED, PERSISTENT OBJECTIONS TO DL 1281'S CONSTITUTIONALITY FROM PROFESSIONAL ASSOCIATIONS AND THE MEDIA THEMSELVES. THE PRESSURE HAS HAD AN IMPACT. CARABINERO JUNTA MEMBER GEN MENDOZA, DURING A RECENT MEETING WITH MEDIA REPRESENTATIVES, STATED THAT THE JUNTA "HAD NOT GOTTEN AROUND TO RECONSIDERING DECREE LAW 1281."

7. A "MERCURIO" FEB 5 EDITORIAL URGED PRESIDENT PINOCHET TO RESCIND THE DECREE. A YEAR AGO, THE GOC WITHDREW A SIMILAR RESTRICTION ON PRESS FREEDOM JUST BEFORE THE "DAY OF THE LIMITED OFFICIAL USE

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PRESS" FEB 17, AND MERCURIO ASKED HIM TO DO LIKEWISE NOW. MANAGING EDITOR SILVA QUOTED AN INTER-AMERICAN PRESS ASSOCIATION (SIP) EXECUTIVE COMMITTEE RESOLUTION SUPPORTING CHILEAN EFFORTS TO HAVE THE DECREE OVERTURNED. (SILVA PARTICIPATES IN SIP MEETINGS.)

8. COMMENT: THE PUBLIC CONTROVERSY OVER THE RADIO BALMACEDA/ DL 1281 ISSUE ILLUSTRATES THE INCREASINGLY OPEN PRESS AND

MEDIA OPPOSITION TO TIGHT JUNTA CONTROL. IT REMAINS TO BE
SEEN WHETHER THE JUNTA WILL ACCEPT THE CORTE MARCIAL'S ACTION,
AND WHETHER IT WILL RETAIN DL 1281 IN THE FACE OF WIDESPREAD
CRITICISM. LAST WEEK'S DECISION TO CUT OFF DEBATE ON EX-
PRESIDENT FREI'S PAMPHLET SUGGESTS THAT THERE WILL BE A HARD-
LINE RESPONSE. ON THE OTHER HAND, AS THE UN HUMAN RIGHTS
COMMISSION PREPARES TO CONSIDER THE CHILEAN PROBLEM IN GENEVA,
THERE IS A REAL INDUCEMENT TO THE GOVERNMENT TO REFURBISH
ITS IMAGE IN THE AREA OF MEDIA FREEDOM, BY BOWING TO THE
PLEAS OF PRESS AND MEDIA AND TAKING THE MORE LIBERAL LINE.
POPPER

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